

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000671

08/25/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

DOUGLAS W JANN

v.

AMIRA NEHMEH

ROBERT C BILLAR

EXHIBITS-CCC  
FILE ROOM-CSC  
FINANCIAL SERVICES-CCC  
JUDGE CAMPBELL  
NORTH VALLEY JUSTICE COURT  
REMAND DESK-LCA-CCC  
KEITH STOTT, DIRECTOR  
COMMISSION ON JUDICIAL  
CONDUCT  
1501 W WASHINGTON, STE 229  
PHOENIX AZ 85007  
BRIAN KARTH, COURT  
ADMINISTRATOR  
LIMITED JURISDICTION  
111 W MONROE, STE 820  
PHOENIX AZ 85003

MINUTE ENTRY

NORTH VALLEY JUSTICE COURT

Cit. No. #2763130A

Charge: EXCESSIVE SPEED

DOB: 11/20/67

DOC: 07/24/02

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This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement without oral argument since its assignment. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the corrected tape recording of the proceedings provided by the North Valley Justice Court, and the memoranda submitted by counsel. This Court has also reviewed the file of the North Valley Justice Court.

Appellant, Amira Nehmeh, was charged by complaint with Excessive Speed, a class 3 Misdemeanor offense, in violation of A.R.S. Section 28-701.02(A). Appellant's case proceeded to trial before the North Valley Justice Court on October 31, 2002. Appellant appeared without representation by counsel, and in fact had previously waived her right to counsel. The only witnesses were Appellant and DPS Officer Troy Titzer. Appellant was found guilty and ordered to pay a fine of \$210.00. Appellant filed a timely Notice of Appeal in this case.

The only issue raised by Appellant on appeal is her contention that the trial judge abused his discretion by denying her Motion to Continue filed six (6) days prior to the trial. Generally, the issue whether to grant or not to grant a continuance is a matter within the sound discretion of the trial judge.<sup>1</sup> A trial judge's ruling on a Motion to Continue should not be disturbed in the absence of evidence of a clear abuse of discretion, and resulting prejudice to the party whose motion was denied.<sup>2</sup> The record in this case does not reflect a clear abuse of discretion by the trial judge, but more importantly, the record does not disclose any prejudice to Appellant.

Though not raised by either party, this Court has reviewed the record of the proceedings and discovered several irregularities involving Appellant's due process rights to a fair trial. Appellant's counsel (on appeal) accurately summarizes the conversation between Appellant and the trial judge in their brief at page 2. The trial judge asked Appellant if she had any objection to the introduction and admission of exhibits #1 and #2 offered by Officer Titzer. Appellant replied, "Yes."<sup>3</sup> The trial judge (The Honorable Ken Warren, North Valley Justice of the Peace) then informed Appellant that if she had an objection, she must cite the rule from the Arizona Rules of Evidence in support of her objection. The Justice of the Peace incorrectly informed Appellant that she must state a rule number as part of her objection. It should be noted that Appellant is untrained in the law and was clearly unable to do this, and she attempted to explain this to the judge who refused to hear her explanation. The record reflects repeated attempts by

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<sup>1</sup> State v. Amarillas, 141 Ariz. 620, 688 P.2d 628 (1984); State v. Cook, 172 Ariz. 122, 834 P.2d 1267 (App. 1990).

<sup>2</sup> State v. Amarillas, supra; State v. Jackson, 157 Ariz. 589, 760 P.2d 589 (App.1988).

<sup>3</sup> Corrected tape recording (cassette tape) of the proceedings of October 31, 2002.

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Appellant to explain her lack of legal knowledge, and repeated interruptions by the trial judge attempting to cut off Appellant from speaking or explaining her objection.

The Arizona Rules of Evidence provides a definition of the requirement of an “objection” in Rule 103:

...a timely objection or motion to strike (must) appear... of record, stating the specific ground of objection, if the specific ground was not apparent from the context....

The Arizona Rules of Evidence do not require a party making an objection to state the specific rule from the Arizona Rules of Evidence that forms the basis for the objection. Rather, the rules require a party or an attorney to state “the specific ground of (the) objection”.<sup>4</sup> The practice in the Superior Court for Maricopa County has long been for attorneys to state the nature of their specific objection, such as “hearsay”, “lack of foundation”, “lack of authentication”, etc. To require Appellant, a person not trained in the law, to cite rules of evidence with which she was not familiar required the Appellant to meet a standard higher than the standard to which attorneys are held to meet in the Superior Court.

The right to a fair trial is an important right guaranteed to all litigants by the 14<sup>th</sup> Amendment to the United States Constitution, and guaranteed by Article II, Section 4 of the Arizona Constitution. Where a party has been denied an essential component of due process, such a denial constitutes fundamental error.<sup>5</sup> Certainly, due process includes not only the right to call witnesses on one’s own behalf, to cross examine and confront the witnesses and evidence presented against one in a trial, but also the right to present one’s evidence without interference or harassment by another litigant or the judge.

In this case, the trial judge’s incorrect statements to Appellant had the clear effect of suppressing Appellant’s willingness and ability to make future objections to testimony or exhibits. The trial judge’s incorrect explanation of the necessity of citing to specific rules of evidence by rule number effectively precluded Appellant from making objections, and thereby deprived her of a fair trial.

Additionally, this Court must note that the manner and tone of the trial judge in speaking to Appellant communicated his frustration and anger towards Appellant. All persons in a courtroom, including litigants and witnesses, are entitled to be treated with dignity and respect. The tone and words used by the trial judge in this case were not dignified, nor respectful. Appellant was entitled to have her case heard by a judge willing to consider all of the evidence without bias or prejudice, but the trial judge’s tone and words communicated that he was not unbiased or unprejudiced during this trial to hear the case. Certainly, the trial judge could have

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<sup>4</sup> Rule 103(a)(1)(emphasis added).

<sup>5</sup> See, *State v. Flowers*, 159 Ariz. 469, 768 P.2d 201 (App. 1989).

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called a recess to collect his thoughts and compose himself, but he did not do so. This Court must conclude from the record before it that Appellant was also denied her due process right to a fair and impartial judge. This case will be remanded for a new trial before another judicial officer.

IT IS THEREFORE ORDERED reversing the finding of guilt and sentence imposed by the North Valley Justice Court in its entirety.

IT IS FURTHER ORDERED remanding this case back to the North Valley Justice Court for a new trial before another judicial officer.

IT IS FURTHER ORDERED that the Clerk of this Court shall not return the tape recordings, including the corrected tape, but shall retain them in this court's file, pending further order of this court.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT